IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No. 109 of 1998
Date of decision: 9.11.2006

M/s Doaba Co-op. Sugar Mills, Nawanshahr

Applicant
through
Mr. M. R. Sharma, Advocate

v.

The Commissioner of Income-tax, Jalandhar

Respondent
through
Dr. N. L. Sharda, Advocate

CORAM:

Hon'ble Mr.Justice Ajay Kumar Mittal
Hon'ble Mr.Justice Rajesh Bindal

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, `the Tribunal'), arising out of its order dated 6.3.1998, in I.T.A. No. 358(ASR)/1991, in respect of assessment year 1989-90:

> "Whether, on the facts and the circumstances of the case and the provisions of law, additional tax under section 143(1A) of the Income-tax Act, 1961 can be levied where there is no positive income. But only loss even after adjustment under Section 143(1)(a) of the Income-tax Act, 1961 ?"

The facts, as noticed by the Tribunal in the statement of the case, are that the assessee filed return for the assessment year 1989-90 at a total loss of Rs. 3,49,52,710/-. The Assessing Officer prepared intimation under Section 143(1)(a) of the Income-tax Act, 1961 (for short, `the Act') by which the total loss of Rs. 3,49,52,710/- was restricted to Rs. 1,37,45,830/- after invoking the provisions of Section 43B of the Act and making adjustment of Rs. 2,12,06,883/- on account of

taxes payable, bonus, sales-tax etc. and also concluded that the amount of Rs. 17,80,534/- was payable by the assessee as additional tax purportedly to be under Section 143(1A) of the Act. Thereafter, the assessee moved an application under Section 154 of the Act for rectification of mistake in calculation of the amount adjustable under Section 43B of the Act and the same having been accepted, the amount of additional tax was reduced to Rs. 24,001/-. In appeal before the Commissioner of Income-tax (Appeals) [for short, `the CIT (A)'], the assessee succeeded. However, before the Tribunal, the Revenue had been able to make out a case that the CIT(A) had dealt with the issue on a totally wrong premise by relying upon a judgment of this Court in Commissioner of Income-Tax v. Prithipal Singh and Co., (1990) 183 ITR 69, which had no relevance with the point in issue, as the same pertained to penalty under Section 271(1)(c) of the Act.

We find that an identical issue has been gone into by this Court in I.T.A. No.2 of 2001 -The Haryana Cooperative Sugar Mills Limited, Rohtak v. Commissioner of Income Tax, Rohtak and another, decided on 7.2.2005, wherein it was held as under:

> "In Assistant C.I.T. Versus J.K.Synthetics (supra), their Lordships of the Supreme Court, while reversing two judgments of Delhi High Court in Modi Cement Ltd. Versus Union of India (supra) and J. K. Synthetics Versus Assistant C.I.T. (supra), held that where loss declared by an assessee had been reduced by reason of adjustments made under sub-section (1)(a), the provisions of sub-section (1A) would apply and being a retrospective amendment, additional tax could be legitimately levied on the assessee. The three-Judges Bench distinguished the earlier judgment of two- Judges Bench in C.I.T. Versus Hindustan Electro Graphites Ltd. (supra) by making the following observations:
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> > "This was a case in which the return that the assessee had filed was correct by reason of the law as it stood when the return was filed. A retrospective amendment of Section 28 of the Act rendered that return incorrect. An adjustment in the return was made under sub-section (1) of Section 143 and, therefore, the

provisions of sub-section (1A) were sought to be invoked. This was challenged and the High Court upheld the challenge, as did this Court. It took the view that the additional penalty under sub-section (1A) bore the imprint of a penalty and no penalty could be levied because the return filed by the assessee was correct when it was filed.

This judgment has no application to the facts of the present case for the reason that it is no body's case that a retrospective amendment has rendered a correct return filed by the assessee incorrect. The question here is only whether a loss which is reduced by reason of the application of the provisions of sub-section (1)(a) falls within the ambit of sub-section (1A).

We should add that we have reservations about the correctness of the judgment in Hindustan Electro Graphite Ltd.'s case (2000) 243 ITR 48(SC) principally because the assessee in that case had not challenged the provisions of sub-section (1A). The appeal is allowed. The order under appeal is set aside."

For the reasons stated in The Haryana Cooperative Sugar Mill Limited's case (supra), the question referred is answered against the assessee and in favour of the Revenue.

The reference is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

(Ajay Kumar Mittal)
Judge

9.11.2006
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